

Senate File 525 - Reprinted

SENATE FILE 525
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 233)

(As Amended and Passed by the Senate March 22, 2023)

A BILL FOR

1 An Act relating to criminal law including the disclosure
2 of a defendant's privileged records, no-contact orders,
3 commencement limitations for certain sexual offenses,
4 sexually predatory offenses, victim rights, discovery,
5 postconviction relief actions, criminal appeals, and
6 pretrial bond amounts for certain felonies.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 DIVISION I

2 COMMUNICATIONS IN PROFESSIONAL CONFIDENCE

3 Section 1. Section 622.10, subsection 4, paragraph a,
4 subparagraph (2), Code 2023, is amended by adding the following
5 new subparagraph division:

6 NEW SUBPARAGRAPH DIVISION. (e) As used in this subsection,
7 "*exculpatory information*" means information that tends to
8 negate the guilt of the defendant and not information that is
9 substantially cumulative.

10 DIVISION II

11 NO-CONTACT ORDERS

12 Sec. 2. Section 664A.8, Code 2023, is amended to read as
13 follows:

14 **664A.8 Extension of no-contact order.**

15 ~~Upon the filing of an application by the state or by the~~
16 ~~victim of any public offense referred to in section 664A.2,~~
17 ~~subsection 1 which is filed within ninety days prior to the~~
18 ~~expiration of a modified no-contact order, the~~ The court shall
19 modify and extend the no-contact order upon the expiration of
20 the no-contact order for an additional period of five years,
21 unless, upon the filing of an application by the defendant
22 within ninety days prior to the expiration of a modified
23 no-contact order, the court finds that the defendant no longer
24 poses a threat to the safety of the victim, persons residing
25 with the victim, or members of the victim's family. The number
26 of modifications extending the no-contact order permitted
27 by this section is not limited. If the defendant files an
28 application to modify or terminate a no-contact order, the
29 court shall notify the victim at the victim's last-known
30 address and afford the victim a reasonable opportunity to be
31 heard.

32 DIVISION III

33 LIMITATION OF CRIMINAL ACTIONS INVOLVING CERTAIN SEXUAL
34 OFFENSES

35 Sec. 3. Section 802.2B, Code 2023, is amended by adding the

1 following new subsections:

2 NEW SUBSECTION. 5A. Continuous sexual abuse of a child in
3 violation of section 709.23.

4 NEW SUBSECTION. 5B. Kidnapping in the first degree when the
5 person kidnapped, and as a consequence of the kidnapping, is
6 intentionally subjected to sexual abuse in violation of section
7 710.2.

8 NEW SUBSECTION. 5C. Burglary in the first degree in
9 violation of section 713.3, subsection 1, paragraph "d".

10 Sec. 4. Section 802.2C, Code 2023, is amended to read as
11 follows:

12 **802.2C Kidnapping.**

13 An information or indictment for kidnapping in the first,
14 second, or third degree, except as provided in section 802.2B,
15 committed on or with a person who is under the age of eighteen
16 years shall be found within ten years after the person upon
17 whom the offense is committed attains eighteen years of age,
18 or if the person against whom the information or indictment
19 is sought is identified through the use of a DNA profile, an
20 information or indictment shall be found within three years
21 from the date the person is identified by the person's DNA
22 profile, whichever is later.

23 DIVISION IV

24 SEXUALLY PREDATORY OFFENSES

25 Sec. 5. Section 901A.1, subsection 1, paragraph c, Code
26 2023, is amended to read as follows:

27 c. Enticing a minor in violation of section 710.10,
28 subsection 1 or 2.

29 DIVISION V

30 VICTIM RIGHTS

31 Sec. 6. Section 915.11, subsection 1, Code 2023, is amended
32 to read as follows:

33 1. a. A local police department or county sheriff's
34 department shall advise a victim of the right to
35 register with the county attorney, and shall provide a

1 request-for-registration form to each victim. A local police
2 department or county sheriff's department shall provide a
3 telephone number and internet site to each victim to register
4 with the automated victim notification system established
5 pursuant to [section 915.10A](#).

6 b. A local police department or county sheriff's department
7 shall provide a victim with a pamphlet explaining the victim's
8 rights as a victim of a public offense or delinquent act.

9 Sec. 7. Section 915.38, Code 2023, is amended by adding the
10 following new subsection:

11 NEW SUBSECTION. 3A. a. It is the public policy of this
12 state that statements made by children to forensic interviewers
13 at child advocacy centers and child protection centers should
14 be admitted into evidence in the courts.

15 b. Notwithstanding any other provision of law, the court may
16 upon motion of a party admit a recorded statement of a child,
17 as defined in section 702.5, if all of the following apply:

18 (1) The recorded statement describes conduct that violates
19 any Iowa criminal law.

20 (2) The recorded statement was obtained by a forensic
21 interviewer employed by a child advocacy center or child
22 protection center.

23 (3) The interview was conducted substantially in accordance
24 with a nationally recognized protocol for interviewing
25 children.

26 (4) The recorded statement is offered in a criminal
27 proceeding and any of the following apply:

28 (a) The child testifies at trial.

29 (b) The child has been questioned by the defendant or the
30 defendant's attorney at a deposition or any substantially
31 similar setting and any of the following apply:

32 (i) The child is unavailable as a witness as provided in
33 rule of evidence 5.804(a).

34 (ii) The court finds by a preponderance of the evidence that
35 the child would suffer significant emotional or psychological

1 trauma from testifying in the personal presence of the
2 defendant at the time of the criminal proceeding.

3 *c.* A court may deny the admission of a recorded statement
4 under this subsection only if the party opposing the admission
5 proves by clear and convincing evidence that the recorded
6 statement is unreliable.

7 *d.* Portions of a recorded statement admitted pursuant
8 to this subsection may be redacted under the following
9 circumstances:

10 (1) By agreement of the parties.

11 (2) By order of the court, if the court finds by a
12 preponderance of the evidence that redaction is necessary to
13 either:

14 (a) Minimize embarrassment or trauma to the child.

15 (b) Effectuate a provision of the rules of evidence other
16 than the rules of evidence against hearsay.

17 DIVISION VI

18 DISCOVERY

19 Sec. 8. NEW SECTION. 813A.1 **Discovery depositions in**
20 **criminal actions — witness list.**

21 1. Discovery depositions shall not be permitted in any
22 criminal action except upon application to the court and a
23 showing of exceptional circumstances.

24 2. A criminal defendant shall file a written list of the
25 names and addresses of all witnesses expected to be called for
26 the defense at the time the defendant requests or receives
27 discretionary discovery from the state, the date when any
28 approved deposition is taken, or ten days prior to trial,
29 whichever date is earliest. If the defendant does not disclose
30 to the prosecuting attorney all of the defense witnesses, the
31 court shall order the exclusion of the testimony of any such
32 witnesses, absent good cause shown.

33 3. A person who is not yet a party to a criminal action
34 shall not be permitted to file an application with the court to
35 depose another person until such time as the person is charged

1 with or indicted for the associated criminal offense.

2 DIVISION VII

3 POSTCONVICTION RELIEF AND DISCOVERY PROCEDURE

4 Sec. 9. Section 822.7, Code 2023, is amended to read as
5 follows:

6 **822.7 Court to hear application.**

7 The application shall be heard in, and before any judge
8 of the court in which the conviction or sentence took place.
9 However, if the applicant is seeking relief under section
10 822.2, subsection 1, paragraph "f", the application shall be
11 heard in, and before any judge of the court of the county
12 in which the applicant is being confined. A record of the
13 proceedings shall be made and preserved. All rules and
14 statutes applicable in civil proceedings including pretrial
15 and discovery procedures are available to the parties, subject
16 to the restrictions contained in section 822.7A. The court
17 may receive proof of affidavits, depositions, oral testimony,
18 or other evidence, and may order the applicant brought before
19 it for the hearing. If the court finds in favor of the
20 applicant, it shall enter an appropriate order with respect to
21 the conviction or sentence in the former proceedings, and any
22 supplementary orders as to rearraignment, retrial, custody,
23 bail, discharge, correction of sentence, or other matters that
24 may be necessary and proper. The court shall make specific
25 findings of fact, and state expressly its conclusions of law,
26 relating to each issue presented. This order is a final
27 judgment.

28 Sec. 10. NEW SECTION. **822.7A Postconviction relief —**
29 **discovery.**

30 This chapter is intended to provide a limited scope of
31 discovery that is no broader than what is afforded to a
32 defendant in a criminal action. Notwithstanding any other
33 statute, rule, or law, the following limitations on discovery
34 and procedure shall apply to a claim for postconviction relief
35 under this chapter:

1 1. An applicant may conduct discovery only by order of the
2 court to be granted upon a showing that the information sought
3 is reasonably calculated to lead to the discovery of admissible
4 evidence to support or defeat a claim that is adequately
5 pled in the application and, if taken as true, constitutes a
6 colorable claim for relief.

7 2. An applicant shall not be permitted to depose or
8 otherwise conduct discovery involving a victim, as defined in
9 section 915.10, of the underlying public offense, unless the
10 applicant proves all of the following by clear and convincing
11 evidence:

12 a. The evidence is necessary to prove the applicant is
13 innocent of the underlying public offense and all lesser
14 included offenses.

15 b. The information is not available from any other source.

16 c. Contact with a victim is minimized by limitations on
17 the method of discovery including in camera review, remote
18 testimony, or allowing a victim to provide a written statement
19 in lieu of testimony.

20 3. The attorney-client privilege contained in section
21 622.10 shall be absolute, except that the filing of an
22 application shall waive any privilege an applicant may claim
23 regarding an attorney who represented the applicant in the
24 underlying criminal action or any previous postconviction
25 relief action.

26 4. Evidence that would be excluded in a criminal action
27 pursuant to rule of evidence 5.412 shall not be discoverable or
28 admissible in a postconviction relief action.

29 5. The state shall not be required to produce copies
30 of discovery previously disclosed to an applicant in the
31 underlying criminal action or a previous postconviction relief
32 action or which the applicant previously possessed in the
33 underlying criminal action or a previous postconviction relief
34 action.

35 6. The state shall not be required to produce any discovery

1 contained in a court file accessible to the applicant.

2 7. The state shall not be required to produce any discovery
3 that cannot lawfully be disseminated or that is otherwise
4 confidential by law.

5 8. An applicant shall not be permitted to conduct discovery
6 or seek the appointment of an expert witness through ex parte
7 communication or an in camera review.

8 DIVISION VIII

9 CRIMINAL APPEALS

10 Sec. 11. Section 814.6, subsection 1, paragraph a,
11 subparagraph (3), Code 2023, is amended to read as follows:

12 (3) A conviction where the defendant has pled guilty. This
13 subparagraph does not apply to a guilty plea for a class "A"
14 felony ~~or in a case where the defendant establishes good cause.~~

15 Sec. 12. Section 814.6, subsection 2, Code 2023, is amended
16 by adding the following new paragraph:

17 NEW PARAGRAPH. g. A sentence following a guilty plea if
18 the defendant can demonstrate to the appellate court, upon the
19 filing of an application, that the district court more likely
20 than not abused its discretion at sentencing. This paragraph
21 does not apply to a plea agreement, a mandatory sentence, or
22 a sentence entered pursuant to a recommendation made by the
23 defendant or the defendant's attorney.

24 Sec. 13. NEW SECTION. 814.20A No authority to reverse
25 unpreserved errors.

26 An appellate court shall not vacate a criminal judgment on
27 direct appeal based upon errors that were not preserved at the
28 district court. This limitation includes but is not limited
29 to the requirement that a specific motion for judgment of
30 acquittal be made to preserve a challenge to the sufficiency
31 of the evidence and the requirement that a specific motion in
32 arrest of judgment be made in order to challenge a guilty plea.

33 DIVISION IX

34 PRETRIAL BOND FOR CLASS "A" AND FORCIBLE FELONIES

35 Sec. 14. NEW SECTION. 811.1B Pretrial bond amounts for

1 class "A" and forcible felonies.

2 1. It is the policy of this state that, for certain
3 violent offenses, a court setting bond must give significant
4 consideration to the danger a defendant poses to another person
5 or the property of another if the defendant is not detained
6 pending trial. This consideration is in addition to all others
7 recognized by law, including but not limited to the bond amount
8 necessary to secure the defendant's appearance.

9 2. a. When probable cause for an offense is found by
10 the magistrate, or the district court has found the minutes
11 supporting an indictment or information are sufficient to
12 support a conviction if unexplained, and after considering the
13 conditions for release as provided in section 811.2, subsection
14 2, and making a finding on the record, the following shall be
15 presumed to be the minimum pretrial bond amounts for each count
16 charged, notwithstanding any other provision of law:

17 (1) For a class "A" felony, a five hundred thousand dollar
18 bond.

19 (2) For a class "B" forcible felony, a twenty-five thousand
20 dollar bond.

21 (3) For a class "C" forcible felony, a ten thousand dollar
22 bond.

23 (4) For a class "D" forcible felony, a five thousand dollar
24 bond.

25 b. The court shall require the execution of a bail bond
26 with sufficient surety, or the deposit of cash in lieu of bond.
27 However, except as provided in section 811.1, bail initially
28 given remains valid until final disposition of the offense or
29 entry of an order deferring judgment. If the amount of bail
30 is deemed insufficient by the court before whom the offense
31 is pending, the court may order an increase of bail and the
32 defendant must provide the additional undertaking, written or
33 in cash, to secure release.

34 3. The presumption contained in this section is rebuttable
35 only upon a showing by the defendant, by a preponderance of

1 evidence, that the defendant is not a danger to another person
2 or the property of another if not detained pending trial.
3 4. As with other bond reviews, a determination under this
4 section made by a magistrate is reviewable by a district
5 court judge or a district associate judge having original
6 jurisdiction of the offense with which the defendant is charged
7 pursuant to section 811.2, subsection 7, paragraph "a", while a
8 determination made by a district court judge is only reviewable
9 by the appellate court pursuant to section 811.2, subsection
10 7, paragraph "b".